ages would carry costs, a judgment for defendant will not be set aside unless there has also been a violation of some well settled rule of law: *Jones* v. *King*. The principal case was therefore correctly decided, regardless of the question of costs.

DEEDS—GRANTEES—CONSTRUCTION.—B., by warranty deed, conveyed certain land. The indenture is recited to be between "B., party of the first part, and C. B. and children, parties of the second part," etc., and the party of the first part "do grant, etc., to the *party* of the second part *his* heirs and assigns." The habendum stated, "unto the said party of the second part, and unto their heirs and assigns." The covenants run to the "party of the second part and unto their heirs and assigns." C. B. subsequently conveyed this same land to L. T., who, at the time of the conveyance of the land from B. to C. B., was the only child of C. B., now brings action against L, for an accounting, claiming to be a tenant in common of the land by virtue of the deed from B. to C. B., as stated above. *Held*, that T. can recover. *Tyler* v. *Lilly* (1903), — Miss. —, 33 So. Rep. 445.

The court said: "Upon the whole instrument, it is plain that "*his*" is absurd, foolish, and unmeaning, unless applied to the party of the second part; and we, without hesitation, so apply it. This view harmonizes the whole instrument, and takes it out from under the wholesome rule that, where the granting clause is plain it governs, though the habendum clause be in conflict. Here the granting clause becomes clear only by a survey of the whole instrument." It is a familiar rule of construction that all parts of a deed are to be construed together, and all parts given effect, if possible. *Case* v. *Dexter*, 106 N. Y. 548, 13 N. E. Rep. 449; *Jackson* v. *Meyers*, 3 Johns. (N. Y.) 388. It is equally true that where the operative part of a deed is clear and unambiguous, it cannot be controlled by the recitals, habendum, or other parts of the deed. *Dunbar* v. *Aldrich*, 79 Miss. 698, 31 So. Rep. 341. In each case, the court seeks to ascertain, not what the grantor intended to do, but what he, in fact, did. *Smith* v. *Lucus*, 18 Ch. D. 542; *Behn* v. *Burners*, 3 B. & S. 749; ELPHINSTONE ON INTER. OF DEEDS 92, *p 49. In *Martin* v. *Jones*, 62 Ohio St. 519, land was granted to A. J. and his children after him . . to have and to hold said premises to said A. J. and his heirs forever. *Held*, that A. J. took an estate in fee. In a Missouri case the granting clause of a deed was to M. "her children and assigns forever," the habendum was to the said M., "her heirs and assigns forever." M. had eight children living at the time the deed was executed and delivered. *Held*, that M. took a fee simple. *Rines* v. *Mansfield*. 96 Mo. 394, 9 S. W. Rep. 798.

DEEDS—RESERVATION—CONSTRUCTION—EXTENT OF PROPERTY.—A sold certain land to B reserving a building, "known as the chapel," together with the "land on which the said building stands." About forty feet from the building were some horse-sheds which were erected to be used in connection with the chapel. The chapel and horse sheds were enclosed on three sides with a fence. When the defendant was viewing the premises before purchasing them she was in a position where she saw the chapel and where she saw or could have seen the enclosure. After B had purchased the premises, she entered the above named enclosure and tore down and removed the horse sheds. The referee found that sheds and ground within the enclosure were not necessary to the reasonable enjoyment of the chapel. In an action by A against B for trespass and damages, *Held*, that A could recover. *Weed* v. *Wood* (1903), — N. H. —, 53 Atl. Rep. 1024.

The court said: "The evidence establishes by a balance of probabilities that the parties understood and intended that the words 'land on which said

building stands' should mean the lot of land upon which the chapel stood, and devoted exclusively to chapel purposes. The property retained by the plaintiff was the chapel lot as it existed at the time of the execution of the deed, with the sheds upon it." In a Massachusetts case it was held that a conveyance of a "well of water, with the curbs, pump and all utensils belonging to them" carried with it a rectangular strip of ground nine feet square, the same being necessary to the reasonable use and enjoyment of the well. *Johnson* v. *Raynor*, 72 Mass. (6 Gray) 107. In another Massachusetts case it was held that the conveyance of a mill by name passed the land under it and the land adjacent thereto, so far as necessary to its use and no further. *Forbush* v. *Lombard*, 54 Mass. (13 Met.) 109. See also *Langworth* v. *Coleman*, 18 Nev. 440; *Whitney* v. *Olney*, 3 Mason, (U. S. C. C.) 280. In *Blake* v. *Clark* 6 Greenl. (Me.) 436, a conveyance of a mill, by name, was held to pass the fee of the land on which the building actually rested and that immediately under its overhanging projections and no more. It did not include the mill yard.

DEEDS—RESERVATION—EFFECT IN EQUITY—IMPLIED TRUST.—W conveyed certain property to T, inserting the following clause in the deed: "The party of the first part hereto reserves all *claim* or *right* of *action* against the M. and M. Railroad Companies, or either of them, for any and all injury or damage done to the aforesaid property, or the value or uses thereof, in the past, present, or future, by reason of the construction and operation of the elevated railroad in front of said premises as they are now constructed and operated." T conveyed the property to S, he (S) having notice of the reservation in the former deed. S brought action and recovered damages from the Railroad Companies. W in this action seeks to charge S as trustee for the damages recovered. *Held*, that W can charge S as trustee. *Western Union Tel. Company* v. *Shepard* (1901), 169 N. Y. 170, 62 N. E. Rep. 154, 58 L. R. A. 115.

The court, in course of the opinion said: "It is not necessary to reform such a contract. Equity will never permit a dishonest advantage to be gained under a technical rule of law, or tolerate that a purchaser shall keep for himself, against his grantor, the proceeds of rights which he did not pay for or intend to purchase, but, on the contrary, expressly agreed should belong to his grantor." The court took the position that, while from the language of the instrument, it appeared that the grantor reserved, to himself, the right of action, which clearly he could not do, yet equity, regarding the intent rather than the form, would seek the real intention of the parties. The court found that the parties intended to reserve to the grantor, as part consideration for the conveyance, the benefits resulting from the action when recovery was had by the grantee. Considering this a proper case for equitable jurisdiction, the court granted relief, even though there was no fraud in the procurement of the contract. A similar application of the principle that equity looks at the intention rather than at the form is found in *Manning* v. *Rippen*, 86 Ala. 357, 5 So. Rep. 572.

FRAUDULENT CONVEYANCE—WHO ARE CREDITORS—CLAIMANT IN TORT ACTION.—A deed of conveyance for a partial interest in a parcel of land was executed by one A to his brother as grantee, for the purpose as was alleged, of enabling the grantor to get out of the state to avoid a criminal prosecution for shooting and wounding a certain C, who afterwards brought a civil action for damages and obtained judgment for maliciously shooting and wounding him. The consideration for the transfer was $500 plus attorney's fees for the defense in the criminal prosecution and payment of a fine if convicted. The vendee knew of the assault, but not of any intention to bring